



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2017-0056; FRL-9976-75-Region 6]

Approval and Promulgation of Implementation Plans; Texas; Reasonable Further Progress Plan for the Houston-Galveston-Brazoria Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is proposing to approve a revision to the Texas State Implementation Plan (SIP) to meet the Reasonable Further Progress (RFP) requirements for the Houston-Galveston-Brazoria (HGB) moderate 2008 8-hour ozone nonattainment area (HGB area). Specifically, EPA is proposing to approve the RFP demonstration, contingency measures, motor vehicle emissions budgets (MVEBs) and an updated 2011 base year emissions inventory.

DATES: Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket No. EPA-R06-OAR-2017-0056, at <http://www.regulations.gov> or via email to jacques.wendy@epa.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make.

The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact Ms. Wendy Jacques, (214) 665-7395, jacques.wendy@epa.gov. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

Docket: The index to the docket for this action is available electronically at www.regulations.gov and in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material), and some may not be publicly available at either location (*e.g.*, CBI).

FOR FURTHER INFORMATION CONTACT: Ms. Wendy Jacques, 214-665- 7395, jacques.wendy@epa.gov. To inspect the hard copy materials, please schedule an appointment with Ms. Wendy Jacques or Mr. Bill Deese at 214-665-7253.

SUPPLEMENTARY INFORMATION: Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

I. Background

In 2008, we revised the 8-hour ozone primary and secondary national ambient air quality standards (NAAQS) to a level of 0.075 parts per million (ppm) to provide increased protection of public health and the environment (73 FR 16436, March 27, 2008). The HGB area was classified as a marginal ozone nonattainment area for the 2008 8-hour ozone NAAQS and initially given an attainment date of no later than December 31, 2015 (77 FR 30088 and 77 FR 30160, May 21,

2012). The HGB area consists of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery and Waller counties.

On December 23, 2014, the D.C. Circuit Court issued a decision rejecting, among other things, our attainment deadlines for the 2008 ozone nonattainment areas, finding that we did not have statutory authority under the CAA to extend those deadlines to the end of the calendar year. *NRDC v. EPA*, 777 F.3d 456, 464-69 (D.C. Cir. 2014). Consistent with the court's decision we modified the attainment deadlines for all nonattainment areas for the 2008 ozone NAAQS, and set the attainment deadline for all 2008 ozone marginal nonattainment areas, including the HGB area as July 20, 2015 (80 FR 12264, March 6, 2015). The HGB area qualified for a 1-year extension of the attainment deadline and we revised the attainment deadline to July 20, 2016 (81 FR 26697, May 4, 2016). As the HGB area did not meet the revised attainment deadline of July 20, 2016, we reclassified the area to moderate and set a due date for a revised SIP of January 1, 2017 (81 FR 90207, December 14, 2016). One moderate classification SIP requirement is reasonable further progress (RFP) reductions in volatile organic compound (VOC) and nitrogen oxide (NO_x) emissions (CAA sections 172 (c)(2) and 182(b)(1) and 40 CFR 51.1110). VOCs and NO_x are ozone precursors.

RFP plans must include contingency measures that will take effect without further action by the state or EPA, which includes additional controls that would be implemented if the area fails to reach the RFP milestones (CAA 172(c)(9)). While the CAA does not specify the type of measures or quantity of emissions reductions required, EPA provided guidance interpreting the CAA that implementation of these contingency measures would provide additional emissions reductions of up to 3% of the adjusted base year inventory (or a lesser percentage that will make up the identified shortfall) in the year following the RFP milestone year. For more information

on contingency measures, please, see the April 16, 1992 General Preamble (57 FR 13498, 13510) and the November 29, 2005 Phase 2 8-hour ozone standard implementation rule (70 FR 71612, 71650). RFP plans must also include MVEBs, which are the allowable on-road mobile emissions an area can produce and continue to demonstrate RFP (40 CFR 93.101 and 93.118(b)(1)(i)).

On December 29, 2016, Texas submitted a RFP SIP revision for the HGB moderate area. The SIP revision (1) updates the 2011 base year emissions inventory that was approved by EPA (80 FR 9204, February 20, 2015), (2) demonstrates a 15% emissions reduction in ozone precursors from the 2011 base year through the 2017 attainment year, (3) demonstrates a 3% emissions reduction for contingency in 2018 if the reductions for 2017 are missed and (4) sets the NO_x and VOC MVEBs for transportation conformity purposes, for a 2017 attainment year.

II. The EPA's Evaluation

We reviewed the Texas SIP submittal for consistency with the requirements of the CAA, EPA regulations, and EPA guidance. A summary of our analysis and findings are provided below. For a more detailed discussion of our evaluation, please see our Technical Support Document (TSD) found in regulations.gov (docket EPA-R06-OAR-2017-0056).

A. Update to the 2011 Base Year Emissions Inventory

An emissions inventory is a comprehensive, accurate, and current inventory of actual emission from all sources. CAA sections 172(c)(3) and 182(b)(1) require that ozone nonattainment SIP revisions include an inventory of NO_x and VOC emissions from all sources in the nonattainment area. As noted above we previously approved the 2011 base year. Since that submittal, Texas further refined the inventory to more accurately reflect actual 2011 emissions. We determined that the revised inventory was developed in accordance with EPA guidance and

regulations and propose to approve the update. Table 1 summarizes the update to the inventory.

For more information, please see the TSD and the Texas SIP submittal.

Table 1. HGB RFP Previous and Updated 2011 Base Year EIs (tpd)

Source Type	Previous NO_x	Updated NO_x	Previous VOC	Updated VOC
Point	108.44	108.33	94.83	95.99
Area	21.14	21.15	308.73	304.90
Non-road Mobile	121.11	142.44	49.93	49.78
On-road Mobile	196.21	188.02	82.62	80.73
Total	446.90	459.94	536.12	531.40

B. Reasonable Further Progress Demonstration

Texas developed emissions projections for 2017 to demonstrate that NO_x and VOC emissions would be reduced by 15%. Table 2 shows the calculations and reductions required to achieve RFP. For more information, please see the TSD and the Texas SIP submittal.

Table 2: Calculation of NO_x and VOC Reductions through 2017(tpd)

Description	NO_x	VOC
a. 2011 Emissions Inventory (from Table 1 above)	459.94	531.40
b. Percent of NO _x and VOC to meet 15% reduction	14.5%	0.5%
c. 15% NO _x and VOC reduction, 2011-2017 (row a multiplied by row b)	66.69	2.66
d. 2017 Target Level of Emissions (a-c)	393.25	528.74

Texas has provided sufficient control measures in their RFP plan to offset growth in emissions by estimating the amount of growth that will occur between 2011 and 2017. The control measures used to achieve the necessary emission reductions to meet the RFP requirements are listed in Table 3.

Table 3. NO_x and VOC Control Measures and Expected Emission Reductions (tpd) for the HGB Area, 2011-2017

Control Strategy Description	NO_x	VOC
Locomotive engine certification standards and fuel programs	18.41	0.65
Commercial marine vessel (CMV) engine certification standards	9.39	0.06

Control Strategy Description	NOx	VOC
and fuel programs		
Small non-road Spark Ignition (SI engines) (Phase 1)	-3.10 ¹	24.29
Heavy duty non-road engines	21.54	11.26
Tiers 2 and 3 non-road diesel engines	27.33	3.95
Small non-road SI engines (Phase 2)	2.17	22.48
Large non-road SI & recreational marine	33.49	13.71
Non-road Texas Low Emission Diesel (TxLED)	1.74	0.00
Non-road Reformulated Gasoline (RFG)	0.03	0.08
Tier 4 non-road diesel engines	11.41	0.59
Diesel recreational marine	0.00	0.01
Small SI (Phase 3)	1.91	13.14
Drilling rig Tier2, 3 and 4 non-road diesel engines	0.68	0.15
Drilling rig low emission diesel	0.04	0.01
RFG with Tier 3 sulfur standard and federal ultralow sulfur diesel	85.13	16.87
Federal Motor Vehicle Control Program (FMVCP)	464.25	198.54
Inspection and Maintenance (I/M)	6.89	7.94
On-road TxLED ²	2.81	0.00
Total Reductions Projected	684.12	313.73

The projections of growth are labeled as the “Uncontrolled Emissions” for 2017 under (a) in the table below. The State followed our standard guidelines in estimating the growth in emissions and are described in greater detail in the TSD.

Table 4. Summary of RFP Demonstration for HGB through 2017 (tpd)

Description	NOx	VOC
2017 Uncontrolled Emissions	1018.21	829.50
Projected Emission Reductions between 2011 and 2017 (from Table 3 above)	684.12	313.73
Projected Emissions after Reductions	334.09	515.77
2017 RFP Targets (from Table 2 above)	393.25	528.74
Surplus or (shortfall)	59.16	12.97
RFP Met?	yes	Yes

C. Contingency Measure Demonstration

¹ The increase in emissions is due to engine modifications to meet the standards for VOC and carbon monoxide.

² The TxLED fuel rules apply to highway (on-road) and non-road vehicles and were approved into the Texas SIP on November 14, 2001 (66 FR 57196). Subsequent revisions were approved April 6, 2005 (70 FR 17321), October 6, 2005 (70 FR 58325), October 24, 2008 (73 FR 63378), and May 6, 2013 (78 FR 26255).

As noted earlier in this action, RFP plans for moderate and above nonattainment areas must include contingency measures to be implemented in the event an RFP milestone is missed.

The Texas 3% attainment year RFP contingency measure demonstration is based on a 2% reduction in NO_x and a 1% reduction in VOC, to be achieved between 2017 and 2018.

Controlled emissions reductions not previously used in the 2017 RFP demonstration may also be used to satisfy contingency requirements, so the excess emissions reductions from the 2017 RFP demonstration are included in the contingency measure demonstration. The 2018 reductions from the federal motor vehicle control program, inspection and maintenance program, and the fuel requirements program were also used in the RFP contingency demonstration.

Texas demonstrated that federal and State measures being implemented are sufficient to reduce emissions by more than 3% and meet the contingency measure requirement for the RFP SIP. We determined that Texas used acceptable methodology to demonstrate that the required emissions reductions are in excess of those needed for RFP and propose to approve the RFP demonstration. Table 4 summarizes the demonstration. For more information, please see the TSD and the Texas SIP submittal.

Table 5. HGB Area RFP Contingency Measure Demonstration (tpd)

Description	NO_x	VOC
A. 2011 Base Year EI (Table 2, line a)	459.94	531.40
B. Percent of NO _x and VOC to meet 3% contingency	2%	1%
C. Required reduction to provide contingency (A x B)	9.20	5.31
D. Excess reduction to meet RFP in 2017 (Table 4)	59.16	12.97
E. Subtract 2017 RFP demonstration MVEB safety margin from excess reductions from 2018 RFP	-23.66	-11.67
F. 2018 On-road FMVCP, I/M, and RFG reductions (23.84-0.94+1.45=24.35) and (9.01-0.51+0.28=8.78)	24.35	8.78
G. Total RFP demonstration contingency reductions (D+E+F) (59.16-23.66+24.35=59.85) and (12.97-11.67+8.78=10.08)	59.85	10.08
Total surplus or shortfall		
Subtract line G from C for surplus (59.85-9.20=50.65) and (10.08-5.31=4.77)	50.65	4.77
Is the contingency measure requirement met?	Yes	Yes

D. Motor Vehicle Emission Budgets

An RFP plan must establish MVEBs for transportation conformity purposes (40 CFR 93.118(b)(1)(i)). The MVEB is the mechanism to ensure that future transportation activities will not produce new air quality violations, worsen existing violations, delay reaching RFP milestones, or delay timely attainment of the NAAQS. A MVEB establishes the maximum amount of emissions allowed in the SIP for on-road motor vehicles. The MVEBs for 2017 provided by Texas in the SIP revision can be found in Table 6.

Table 6. RFP Motor Vehicle Emission Budgets for HGB (Tons/Day)

Year	NO_x	VOC
2017	121.81	68.04

For the budgets to be approvable, they must meet, at a minimum, EPA's adequacy criteria (40 CFR 93.118(e)(4)). The availability of these budgets was posted on our Web site on January 18, 2017, for the purpose of soliciting public comments on their adequacy. The comment period closed on February 17, 2017, and we received no comments. On March 6, 2017, we published the Notice of Adequacy Determination for these MVEBs (88 FR 26091). As a result of such adequacy determination, these MVEBs must be used by state and Federal agencies in determining whether proposed transportation projects conform to the SIP as required by section 176(c) of the CAA. The adequacy determination represents a preliminary finding by EPA of the acceptability of the MVEBs. We are proposing to finalize our finding that these MVEBs are fully consistent with RFP. As the MVEBs sets the allowable on-road mobile emissions the HGB area can produce and continue to demonstrate RFP, we are proposing to approve the MVEBs for the HGB area.

III. Proposed Action

We are proposing to approve the HGB RFP SIP revision submitted on December 29, 2016. Specifically, we are proposing to approve the RFP demonstration, contingency measures, MVEBs and an updated 2011 base year emissions inventory.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: April 19, 2018.

Anne Idsal,

Regional Administrator, Region 6.

[FR Doc. 2018-08660 Filed: 4/24/2018 8:45 am; Publication Date: 4/25/2018]